

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JORGE FELIX GONZALES-ACOSTA

Plaintiff,

v.

No. 1:17-cv-674

BRISTOL WEST INSURANCE COMPANY,

Defendant.

**NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

COME NOW Defendant, Bristol West Insurance Company, (“BWIC”), by and through its attorneys of record, Butt Thornton & Baehr PC (James H. Johansen and Amy E. Headrick), and hereby files its Notice of Removal respectfully petitioning the Court, pursuant to, for the affirmation of removal of this action from the Second Judicial District Court of Bernalillo County, State of New Mexico, to the United States District Court for the District of New Mexico on the following grounds:

1. Plaintiff filed this civil action against Defendant in the Second Judicial District Court, County of Bernalillo, State of New Mexico, Case No. D-202-CV-2017-02910. Pursuant to D.N.M. LR-CIV 81.1, a copy of the Complaint, along with copies of all records and proceedings are attached hereto as **Exhibit A**.

2. According to the Complaint, filed April 25, 2017, Plaintiff is a citizen and resident of the County of Bernalillo, State of New Mexico. [Complaint at ¶1].

3. Bristol West Insurance Company is a foreign corporation, incorporated in the state of Ohio with its principal place of business in the state of Florida, thus BWIC is a citizen of the states of Ohio and Florida for the purposes of diversity citizenship under 28 U.S.C. § 1332.

4. Defendant BWIC was served with the Complaint in this matter, through the New Mexico Superintendent of Insurance, effective May 24, 2017.

5. Complete diversity of citizenship exists between Plaintiff and Defendant.

6. The Complaint alleges four counts against BWIC, including (1) Breach of the Covenant of Good Faith and Fair Dealing; (2) Violation of the Unfair Insurance Practices Act; (3) Violations of Unfair Practices Act; and (4) Intentional Infliction of Emotional Distress. [Complaint at ¶¶6-24].

7. New Mexico law does not a specific monetary amount to be alleged for damages. Rule 1-008 NMRA. Therefore, the substantive allegations are relied upon to determine that the amount in controversy exceeds \$75,000.00. Although BWIC denies Plaintiff may recovery any damages against BWIC, the allegations contained in Plaintiff's Complaint provide a good faith basis to assert the amount in controversy exceeds \$75,000.00. The claims alleged in Plaintiff's Complaint consist of bad faith, extra-contractual claims; violations of the Unfair Trade Practices Act; and an intentional tort. The damages requested include medical costs, pain and suffering, punitive damages, attorney's fees and costs. The Unfair Trade Practices Act allows a recovery of three times actual damages along with fees and costs if the plaintiff prevails. NMSA § 57-12-10(B) and (C). Plaintiff is also seeking punitive damages. The New Mexico Supreme Court has upheld punitive damages awards 7.4 times compensatory damages. *Allsup's Convenience Stores, Inc. v. N River Ins. Co.*, 127 N.M. 1, 976 P.2d 1 (1999). Therefore, based on the substantive allegations contained in the Complaint, Plaintiff's claims could exceed \$75,000.00.

8. Although Defendant does not admit Plaintiff has been damaged in any amount as the result of the actions of Defendant, the amount in controversy of Plaintiff's claim as indicated by the claims alleged on the face of Plaintiff's Complaint exceeds \$75,000.00. Therefore, the amount in controversy requirement of this Court is satisfied.

9. Plaintiff's Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and which is removable by Defendant under the provisions of 28 U.S.C. §1441 in that:

a. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs; and

b. The matter in controversy is between citizens of different states.

10. This Notice of Removal was filed with this Court within thirty (30) days after Plaintiff's Complaint was served.

11. Defendant, immediately upon the filing of this original Notice of Removal, gave written notice of the filing as required by 28 U.S.C. §1446 (D) and filed a copy thereof with the Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico, the Court from which this action is removed.

12. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, Defendant Bristol West Insurance Company requests that the above-entitled action remain in this United States District Court for the District of New Mexico.

Respectfully Submitted,

BUTT THORNTON & BAEHR PC

/s/ James H. Johansen

James H. Johansen

Amy E. Headrick

Attorney for Defendant, Bristol West

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I hereby certify that on the 23rd day of June, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by e-mail; and electronic means, as more fully reflected on the Notice of Electronic filing:

Anthony James Ayala

Attorney for Plaintiff

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/s/ James H. Johansen

James H. Johansen